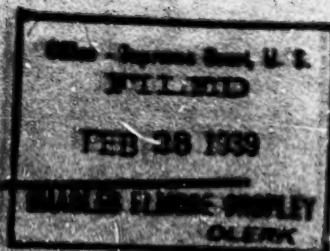


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Supreme Court of the United States

OCTOBER TERM, 1938

No. 294

CITY OF TEXARKANA, TEXAS *Petitioner*

vs.

ARKANSAS LOUISIANA GAS
COMPANY *Respondent*

MOTION OF PETITIONER TO AMEND
DECREE

ED B. LEVEE, JR.

BENJAMIN E. CARTER
Counsel for Petitioner

Texarkana, Texas,
February 24, 1939.

Supreme Court of the United States

OCTOBER TERM, 1938

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CITY OF TEXARKANA, TEXAS.....*Petitioner*

vs.

ARKANSAS LOUISIANA GAS
COMPANY *Respondent*

MOTION OF PETITIONER TO AMEND DECREE

MAY IT PLEASE THE COURT:

Motion

The petitioner, the City of Texarkana, Texas, respectfully moves the Court to amend its decree herein of February 6, 1939, by adding thereto a clause of substantially the following effect:

"It is further ordered that the decree of the United States District Court for the Eastern District of Texas, filed herein on July 31, 1937, be reversed in so far as it held that Section IX of the franchise was not applicable to the period prior to December 1, 1933."

Petitioner suggests that such clause be added immediately preceding the last paragraph of the decree as now written.

Reasons For Motion.

For cause for such motion, petitioner shows:

A.

This court has held, on page 10 of its opinion, that the Texas consumers are entitled to have the lowered rate applied to their consumption for the same periods of time that the Arkansas consumers have enjoyed it.

B.

As stated, on pages 2 and 3 of this court's opinion, the Texas consumers have paid, since 1930, rates which are substantially higher than those finally determined as applicable to the Arkansas consumers. The respondent made refunds to the Arkansas consumers down to the basis of rates lower than the

Texas rates, for the period from 1930 to December 1, 1933.

C.

The decree of the District Court, entered July 31, 1937, held, in part, (R. 146):

"For periods of time prior to December 1, 1933, no refunds are due plaintiff or gas consumers in Texarkana, Texas; Section IX is not applicable to such period."

D.

There is not now any formal decree setting aside this part of the decree of the district court. It may be contended on remand that the district court has no jurisdiction, without such formal order, to set aside this part of its decree.

The decree of this court does two things:

1. It reverses the decree of the Circuit Court of Appeals.
2. It remands the cause to the district court "for further proceedings in conformity with the opinion of this court."

This decree leaves in effect that part of the decree of the district court which ordered refunds for the period from December 1, 1933, to February 16,

1934. The period from February 16, 1934, to date is taken care of by specific directions in the opinion that the district court should, on motion of the city, grant leave to file a supplemental petition to bring to date the controversy over the refund of rates collected subsequent to February 16, 1934.

But there is no specific direction with reference to that part of the decree of the district court which held that the consumers are not entitled to refunds for the period prior to December 1, 1933. If the consumers are entitled to refunds for this period, then the petitioner submits that it is proper for the decree of this court to give some specific direction as to that part of the decree of the district court which held to the contrary.

E.

This part of the decree of the district court was assigned as error by the city on its appeal to the Circuit Court of Appeals (R. 255). It was described in the petition for *certiorari* filed in this court (p.p. 10 & 11), and alleged as error (p. 18) and correction of this error was asked in the prayer in said petition (p. 18). In the city's brief on the merits, it was assigned as error (p. 23) and was argued on p. 84.

* * * *

WHEREFORE, the City of Texarkana, Texas,
prays that the decree of February 6, 1939, be amended as above set out.

Respectfully submitted:

ED B. LEVEE, JR.

BENJAMIN E. CARTER
Counsel for Petitioner

Texarkana, Texas.
Feb. 24, 1939.